

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

HEUBLEIN, INC.,

as
Petitioner.

against

GENERAL CINEMA CORPORATION,

Respondent.

RESPONSE TO MOTION FOR
JOINT CONSIDERATION

Respondent, General Cinema Corporation, does not oppose the motion of Petitioner Heublein, Inc. for joint consideration of the latter's Petition for a Writ of Certiorari with the Petition in Texas International Airlines, Inc. v. National Airlines, Inc., No. 83-932. In not opposing Petitioner's motion, Respondent does not concede, however, that the instant case and Texas International represent inconsistent applications of Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), and this Court's prior decision, interpreting that statute in Kern County Land Co. v. Occidental Petroleum Corp., 411 U.S. 582 (1973).

Under § 16(b) and Kern County the following distinctions between Texas International Airlines, Inc. v. National Airlines, Inc., 714 F.2d 533 (5th Cir. 1983), and Heublein, Inc. v. General Cinema Corp., unofficially

reported at [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,597 (2d Cir. 1983), are significant:

1. The transaction in Texas International involved a voluntary sale of shares by a shareholder, bargained for and negotiated at arm's length. The transaction in Heublein involved an involuntary exchange of shares, resulting from operation of law, upon the consummation of a merger over whose terms and timing the shareholder exercised no control and against whose approval it voted.

2. The transaction in Texas International was a conventional sale of stock for cash, and was not within the categories of transactions specified by this Court in Kern County as constituting "unorthodox" transactions, subject to a pragmatic analysis of § 16(b) liability. This is in contrast to the transaction in Heublein, a forced exchange of shares pursuant to a merger, which this Court explicitly held was a transaction subject to a pragmatic analysis.

Respondent will more fully discuss the foregoing issues in its response to Petitioner's Petition for a Writ of Certiorari to be filed with this Court.

Dated: New York, New York
January 17, 1984

Respectfully submitted,

Robert E. Zimet

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CERTIFICATE OF SERVICE

I, Robert E. Zimet, hereby certify that I am a member of the bar of this Court and that on January 17, 1984, I caused to be served on counsel of record for Petitioner a true copy of Respondent's Response to Motion for Joint Consideration by causing said document to be hand delivered to:

Thomas McGinnney
White & Case
14 Wall Street
New York, New York 10005

Dated: New York, New York
January 17, 1984

Robert E. Zimet
Robert E. Zimet